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The Legal Status of Aircraft (Book Review)

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BOOK REVIEWS

THE LEGAL STATUS OF AIRCRAFT. By J. P. Honig. The Hague, Netherlands: Martinus Nijhoff, 1956. Pp. 214. \$5.00.

This comprehensive and well documented review of a subject, on which there is a great need for authoritative opinion, includes analyses which should capture the interest of the scholar and provide practitioners with a valuable source of material. The review of early theories as to the nature of airspace will serve to clarify the concepts of sovereignty and ownership. In a well reasoned presentation, the author concludes that the sovereignty concept must receive universal acceptance and the recognition that it includes that portion of the territorial airspace over which nations deem its exercise to be of importance. Its limits must not be fixed by the present or foreseeable capabilities of men or machines.

His discussion of jurisdiction recognizes that the understandable desire of nations to guard against infringement of their sovereign prerogatives weighs heavily in deliberations incident to their endorsement of any precept of international law. He proposes as the most practical rule, if not the most desirable from a legal standpoint, that aircraft are subject to the jurisdiction of the nation whose flag they fly and to that of the nation where the act occurred, whenever that nation has a particular interest. The concept is sound. But its justification is the rights and interests of the countries concerned rather than, as the author suggests, the difficulty of determining the position of the aircraft when the act was committed. Jurisdiction cannot rest upon lack of evidence. Although Mr. Honig believes—and he may be quite correct—that the reasons for attaching nationality to aircraft are altogether different from the reasons for attaching it to ships at sea, he perceives no difference in effect. In the chapter on criminal jurisdiction he observes that application of principles of maritime law permits the country whose flag the aircraft carries to prosecute for crimes committed aboard, if they are also punishable offenses in the place committed. He shares in what he describes as the general concern over the lack of jurisdiction in any state to prosecute for crimes committed in certain areas. The difficulty of achieving international agreement on such a vital issue is indicated by the fact that the Netherlands asserts an absolute right to prosecute for acts committed aboard its aircraft which are contrary to its criminal law.

Of particular interest to the non-specialist is the analysis of the property laws relating to aircraft, as they exist in various nations, and the author's conclusion that many, including the United States and the United Kingdom, treat aircraft not as a chattel but as a kind

of property hitherto unknown to the law. He labels it "movable property *sui generis*." The chapter on acquisition of title to aircraft includes a digest of the recording facilities and the effect in various countries of recording interests in aircraft. As he points out, this effect would not be changed by the adoption of an internationally uniform recording system. This he recommends without endorsing the proposed convention on international recognition of rights in aircraft, which would require that contracting states recognize the validity of recorded interests.

The chapter on civil jurisdiction includes an excellent treatment of the effects of the Warsaw and Rome Conventions on claims arising out of carriage by air, and a summary of the forums presently available to claimants, together with proposals by recognized authorities for arbitration or an international tribunal to adjudicate such claims. The author rejects these and notes the objections to affording claimants discretion as to the choice of a forum, and the reluctance of the courts to give full faith and credit to foreign judgments. It is indeed refreshing to find a well informed authority expressing the opinion that our established judicial systems are as competent to resolve problems peculiar to the science of aviation, as they have shown themselves to be when confronted with problems created by technical advances in other scientific fields. While not endorsing the special tribunal proposals, Mr. Honig urges that if there is to be such a body that its authority should be sufficiently broad to include furnishing interpretations of the Chicago Convention. There appears no reason for limiting this authority to that convention alone. He considers the Council of ICAO¹ unsuited to the interpretation function, as that is a political rather than a judicial tribunal and makes no pretext of impartiality. He notes that nothing approaching uniformity for the treatment of torts committed aboard aircraft has been achieved and predicts that without a convention nothing will be achieved.

It is unfortunate that in presenting a treatise for use in Anglo-Saxon countries, the author has not included footnote translations of the proposals and observations of authorities whom he quotes in their original French text.

Both in his style and in organization of material, there is a tendency toward repetition, which may disturb the scholar but aid the practitioner who is venturing into an unfamiliar field of law.

MARTIN J. WHITE.*

¹ The International Civil Aviation Organization (ICAO) with headquarters in Montreal, Canada, was established as a provisional organization in 1945, and as a permanent body in 1947. It consists of an assembly to which fifty-two member states belong on an equal basis, and a council of twenty-one member states elected by the assembly for a three-year term. Its purpose is to further cooperation in the air. See INTERNATIONAL CIVIL AVIATION ORGANIZATION, MEMORANDUM ON ICAO (1951).

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